

Message Text

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ACTION NEA-10

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FM AMEMBASSY KABUL
TO SECSTATE WASHDC IMMEDIATE 9940

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EO 11652: NA
TAGS: BGEN, EINV, AF
SUBJ: INDAMER AFGHAN INDUSTRIES MAY REQUEST EMBASSY TAKE CUSTODY
OF ITS PROPERTY

REF: A) STATE 226703, B) STATE 220336, C) KABUL 6433

1. SUMMARY: INDAMER'S EXPATRIATE PERSONNEL WILL PROBABLY LEAVE AFGHANISTAN SOON. INDAMER'S PRINCIPAL STOCKHOLDER WANTS THE EMBASSY TO TAKE CUSTODY OF INDAMER'S PROPERTY. INDAMER'S TAX DIFFICULTIES, WHICH PREDATE THE PRESENT REGIME, HAVE NOW ESCALATED TO A \$2 MILLION TAX LIABILITY, A LIABILITY WHICH INDAMER CHALLENGES AND WHICH EXCEEDS INDAMER'S OWN VALUATION OF ITS ASSETS. INDAMER'S OWNERS HAD APPARENTLY HOPED TO HAVE THE DRA EXPROPRIATE THE FIRM'S HOLDINGS SO THAT THE USG WOULD HAVE TO STEP IN. THEY MAY CONSIDER "CUSTODIANSHIP" AS SERVING THE SAME PURPOSE. EMBASSY DOUBTS THE APPROPRIATENESS OF ACCEPTING CUSTODY OF INDAMER'S PROPERTY.

ACTION REQUESTED: THAT DEPARTMENT PROVIDE INSTRUCTIONS EXPEDITIOUSLY ON WHETHER WE SHOULD ACCEPT SUCH CUSTODY IF, AS EXPECTED, INDAMER SEEKS TO DROP ITS PROBLEMS IN OUR LAPS. END SUMMARY

2. EMBOFF CONVEYED TO RICHARD KOSZAREK SEPT 9 MESSAGE CONTAINED PARA 1 REF A. EMBOFF TOLD KOSZAREK THAT EMBASSY COULD NOT ACCEPT CUSTODY OF INDAMER'S PROPERTY IN AFGHANISTAN WITHOUT FIRST SEEKING LIMITED OFFICIAL USE

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INSTRUCTIONS FROM WASHINGTON. KOSZAREK REQUESTED THAT EMBASSY SEEK SUCH INSTRUCTIONS.

3. KOSZAREK SAID INDAMER'S PROPERTIES INCLUDE, INTER ALIA, TWO AND ONE-HALF ACRES OF BUILT-UP LAND WITH OFFICES AND WORKSHOP, PLMISCELLANEOUS EQUIPMENT AND SPARE PARTS INVENTORY. HE SAID HE WOULD PROVIDE EMBASSY WITH AN UP-TO-DATE INVENTORY. (N.B. INDAMER HAD

EARLIER ESTIMATED THE MARKET VALUE OF ITS ASSETS AT ABOUT \$2 MILLION).

4. KOSZAREK INDICATED THAT HIS FATHER'S DECISION TO HAVE HIM LEAVE AFGHANISTAN IMMEDIATELY (REF A) AND TO "TURN OVER THE KEYS" TO INDAMER'S PROPERTY TO THE EMBASSY WAS NOT UNEXPECTED. HE EXPLAINED THAT THIS WAS AN OPTION WHICH HAD BEEN BROACHED TO HIS FATHER, JOSEPH KOSZAREK, PRINCIPAL STOCKHOLDER OF INDAMER, VIA AN INTER-MEDIARY A FEW DAYS AGO. HE VOLUNTEERED THAT INDAMER HAS BEEN "TRYING TO GET THE GOVERNMENT TO FORECLOSE" ON THE FIRM, I.E., EXPROPRIATE THE FIRM, FOR SOME TIME. (COMMENT: ALTHOUGH HE DID NOT SAY SO EXPLICITLY, KOSZAREK SEEMED TO IMPLY THAT STRAIGHTFORWARD EXPROPRIATION WOULD ENABLE INDAMER'S AMERICAN OWNERS TO PRESS THE DRA FOR PROMPT AND ADEQUATE COMPENSATION VIA USG CHANNELS.) HOWEVER, KOSZAREK CONTINUED, THE DRA IS SEEKING TO TAKE OVER INDAMER'S ASSETS BY CLAIMING THAT THE FIRM OWES BACK TAXES IN EXCESS OF THE MARKET VALUE OF ITS ASSETS.

5. ACCORDING TO KOSZAREK, EITHER INDAMER OR THE DRA COULD HAVE RECOURSE TO THE AFGHAN "OFFICIAL LIQUIDATOR" WHO WOULD SELL OFF INDAMER'S ASSETS IN SETTLEMENT OF THE FIRM'S LIABILITIES. HOWEVER, NEITHER INDAMER NOR THE DRA WISHES TO PURSUE THIS ROUTE, HE CLAIMED. ACCORDING TO KOSZAREK AND MR. RAMAN, INDAMER'S CHIEF ACCOUNTANT, INDAMER'S MANAGEMENT HAD PREFERRED, PRIOR TO JOSEPH KOSZAREK'S LATEST INSTRUCTIONS, TO HAVE A DIALOGUE WITH THE DRA WHEREBY INDAMER ITSELF WOULD SEEK TO DISPOSE OF ITS ASSETS AND SETTLE ITS LIMITED OFFICIAL USE

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BILITIES.

THESE LIABILITIES INCLUDE FOUR YEARS' BACK PAYMENTS TO THE SOCIAL SECURITY FUND ON BEHALF OF INDAMER'S WORKERS, AMOUNTING TO ABOUT AFS 1.7 MILLION; MISCELLANEOUS LOANS FROM BAZAAR MONEY LENDERS AND INDAMER'S OWN EMPLOYEES AMOUNTING TO BETWEEN AFS 1.5 AND 2.0 MILLION;

AND A LOAN FROM PASHTANY TEJARATY BANK, AFS 1.0 MILLION (AFS 39 EQUAL US\$ 1). TO RAISE MONEY TO SETTLE THESE LIABILITIES, KOSZAREK SAID, INDAMER HAD AGREED TO ACCEPT AN AFS 4.5 MILLION PAR VALUE OFFER FOR INDAMER'S SHARES IN THE SAMOON RAISIN PLANT. HOWEVER, INDAMER IS FEARFUL THAT THE DRA MAY FREEZE THE PROCEEDS FROM THE SALE OF THE FIRM'S SAMOON SHARES IN SETTLEMENT OF INDAMER'S PURPORTED TAX OBLIGATIONS.

6. INDAMER'S TAX OBLIGATIONS. AS INDICATED IN REF C AND PREVIOUS MESSAGES, INDAMER'S TAX SITUATION WITH THE DRA IS HIGHLY COMPLEX. THE DRA IS REVIEWING INDAMER'S TAX RECORDS BACK TO ITS FOUNDING IN 1958 AND CLAIMS THAT INDAMER OWES AFS 26 MILLION FOR THE YEARS 1958-72, EXCLUDING THREE YEARS WHICH ARE IN DISPUTE AND UNDER LITIGATION. FOR THE PERIOD 1973 TO DATE, THE DRA HAS ARBITRARILY ASSESSED A TAX LIABILITY OF AFS 52 MILLION IN THE ABSENCE OF ANY INDAMER BALANCE SHEETS FOR MOST OF THAT PERIOD. (INDAMER BLAMES

THE PREVIOUS GOVERNMENT'S REFUSAL TO PERMIT THE FIRM TO IMPORT AN ACCOUNTANT FROM ABROAD FOR THIS LACK OF BALANCE SHEETS.) THE DRA STATES THAT ONCE INDAMER PRESENTS BALANCE SHEETS FOR THE 1973-78 PERIOD, THE TAX ASSESSMENT MAY BE ADJUSTED. INDAMER OFFICIALS SAY THAT THE DRA'S TOTAL TAX CLAIM NOW TOTALS ABOUT AFS 90 MILLION.

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INDAMER HAS ASKED THE DRA FOR TIME (UNTIL MARCH 1979) TO PUT ITS BOOKS IN ORDER. ON AUG 9, THE EMBASSY ENDORSED, IN A LETTER TO THE MINISTRY OF COMMERCE, INDAMER'S REQUEST FOR SUFFICIENT TIME TO WIND UP ITS AFFAIRS. COMMERCE HAS NOT RESPONDED TO THAT LETTER, AND THE EMBASSY DOUBTS WHETHER THE DRA WILL PERMIT INDAMER TO HAVE THAT MUCH TIME. THE EMBASSY HAD BEEN PREPARED TO REITERATE ITS REQUEST FOR AN EXTENSION OF TIME FOR INDAMER TO CLOSE OUT ITS OPERATIONS (PER PARA 5, REF B) BUT, GIVEN INDAMER'S APPARENT INTENTION TO SHUT ITSELF DOWN IMMEDIATELY, WE THINK SUCH A REQUEST IS NOW INAPPROPRIATE.

7. AMBASSADOR HAS APPOINTMENT WITH FONMIN AMIN ON TUESDAY, SEPT 12, AND PLANS TO RAISE INDAMER ISSUE WITH HIM. AMBASSADOR WILL STRESS THAT, ALTHOUGH WE DO NOT TAKE A POSITION ON THE LEGAL AND TAX ISSUES INVOLVED, WE TRUST THAT THE DRA WILL GIVE INDAMER A FAIR HEARING REGARDING MATTERS IN DISPUTE, AND THAT WE HOPE A MUTUALLY SATISFACTORY SETTLEMENT CAN BE REACHED BETWEEN INDAMER AND DRA AUTHORITIES. (COMMENT: SHOULD INDAMER ABANDON SHIP IN THE NEAR FUTURE, OUR DEMARCHE TO AMIN ON INDAMER'S BEHALF COULD PROVE SOMEWHAT EMBARRASSING FOR US.)

8. RICHARD KOSZAREK'S DEPARTURE. HE TOLD EMBOFF THAT HE PLANS TO LEAVE AFGHANISTAN AS SOON AS HE OBTAINS AN EXIT PERMIT. AS OF SUNDAY, SEPT 10, HE HAD NOT BEEN ABLE TO GET FINAL CLEARANCES FOR THAT PERMIT. HE HOPES TO GET THE PERMIT WITHIN THE NEXT FEW DAYS. EMBOFF ASKED

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THAT EP US ADVISED RE HIS DEPARTURE ARRANGEMENTS. HE UNDERTOOK TO DO SO.

9. EMBASSY CUSTODIANSHIP OF INDAMER PROPERTY. AS KOSZAREK ENVISAGES IT, HE OR ONE OF INDAMER'S MANAGEMENT OFFICIALS WILL SIMPLY LOCK THE DOORS TO INDAMER'S PROPERTIES, DELIVER THE KEYS TO THE EMBASSY, AND DEPART AFGHANISTAN. EMBOFF CAUTIONED THAT WITHOUT AUTHORIZATION FROM WASHINGTON -- WHICH IN SUCH AN IRREGULAR, IF NOT UNPRECEDENTED, SITUATION MIGHT NOT BE FORTHCOMING -- THE EMBASSY COULD NOT ASSUME RESPONSIBILITY FOR INDAMER'S PROPERTY.

10. COMMENT: NEEDLESS TO SAY, EMBASSY DOES NOT RELISH THE IDEA OF ASSUMING CUSTODY OF INDAMER'S PROPERTY. WE LACK THE PERSONNEL RESOURCES TO TAKE CUSTODY EFFECTIVELY, OTHER THAN PERHAPS TO TAKE A SIMPLE INVENTORY AND PUT A CONSULAR SEAL ON THE DOORS. MOREOVER, WE SUSPECT THAT INDAMER'S OWNERS WILL WANT US TO DISPOSE OF THE FIRM'S ASSETS AND SETTLE ITS DEBTS AND TAX LIABILITIES. IF SO, THAT WOULD PUT USG IN THE MIDDLE OF A COMPLEX AND PARTICULARLY UNSAVORY CAN OF WORMS. OUR READING OF INDAMER'S OWNER'S INTENTIONS IS THAT THEY PROBABLY DECIDED, EVEN BEFORE THE APRIL 1978 COUP, TO CLOSE DOWN INDAMER'S OPERATIONS IN AFGHANISTAN -- THEY HAD ALREADY CEASED MOST COMMERCIAL OPERATIONS SOME TIME BEFORE THE COUP AND KOSZAREK HAS HINTED TO EMBOFF THAT INDAMER WAS ON THE VERGE OF BANKRUPTCY. FOLLOWING THE COUP AND THE DRA'S INSISTENCE THAT INDAMER AND TWO OTHER FOREIGN FIRMS BOTH CEASE OPERATIONS AND REMOVE THEIR FOREIGN PERSONNEL FROM THE COUNTRY, INDAMER'S OWNERS MAY HAVE THOUGHT THAT EXPROPRIATION WOULD BE THE BEST SOLUTION FOR INDAMER. IF INDAMER WERE TO BE EXPROPRIATED, THE OWNERS COULD DEMAND THAT THE USG TAKE APPROPRIATE ACTION TO SECURE PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION. AS RICHARD KOSZAREK PUTS IT, HOWEVER, THE DRA HAS NOT INSTITUTED EXPROPRIATION OR "FORECLOSURE" PROCEEDINGS. RATHER, IT REOPENED TAX FILES AND HAS FOUND INDAMER IN SUBSTANTIAL ARREARAGE. BY HAVING THE EMBASSY TAKE CUSTO THE

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PROPERTY, INDAMER'S OWNERS MAY BELIEVE THAT THE USG WOULD BE PUT IN NEARLY THE SAME POSITION AS IF INDAMER HAD BEEN EXPROPRIATED, I.S., THE USG WOULD HAVE THE RESPONSIBILITY OF DISPOSING OF THE FIRM'S ASSETS AND LIABILITIES. THIS WOULD, OF COURSE, BE AN ONEROUS TASK. MOREOVER, IT WOULD PUT THE EMBASSY IN AN EMBARRASSING POSITION VIS-A-VIS THE DRA AND WOULD OPEN THE USG TO PROTESTS FROM INDAMER'S OWNERS AS TO THE TERMS OF ANY FINANCIAL SETTLEMENT REACHED. OUR REVIEW OF FAM DOES NOT GIVE US ANY CLEAR GUIDELINE ALTHOUGH 7FAM 437 WOULD INDICATE A PREDILECTION AGAINST ACCEPTANCE OF PRIVATE

PROPERTY.

11. ACTION REQUESTED: THAT DEPARTMENT PROVIDE US WITH INSTRUCTIONS AS TO HOW TO RESPOND TO INDAMER'S PROBABLE REQUEST THAT WE ASSUME CUSTODY FOR ITS PROPERTY IN AFGHANISTAN. IF PROVISIONS OF APPLICABLE US LAW AND REGULATIONS PERMIT, WE HOPE THAT OUR INSTRUCTIONS WILL BE TO DECLINE CUSTODY OF INDAMER'S PROPERTY. MEANWHILE, WE REMAIN PREPARED TO TAKE APPROPRIATE STEPS TO SEEK FAIR AND EQUITABLE TREATMENT ON INDAMER'S BEHALF VIS-A-VIS THE DRA. DUBS

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